ROBERT C. LEARY ET AL.

IBLA 76-466, 76-510, 76-539,
76-576, 76-605 Decided October 26, 1976

Appeals from separate decisions of the New Mexico State Office, Bureau of Land Management, requiring execution of affidavits prior to issuance of oil and gas leases.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Words and Phrases

   The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

   Under 30 U.S.C. § 226 (1970), the Department has no authority to issue an oil and gas lease to anyone other than the first qualified applicant. If an agent signs an offer for an applicant, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been filed.

> Where a rubber stamp constitutes an applicant's signature, a State Office of the Bureau of Land Management need not presume that an applicant rather than an agent stamped the card, and where no agent's statement has been submitted, the State Office may take appropriate action to establish that the applicant's signature was imprinted at his request and that he formulated the offer.

APPEARANCES: James W. McDade, Esq., McDade & Lee, Washington, D.C., for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

These are consolidated appeals from separate decisions of the New Mexico State Office, Bureau of Land Management, requiring each appellant to execute an affidavit prior to the issuance of an oil and gas lease. 1/ Appellants' drawing entry cards were drawn first for their respective parcels. However, each appellant's name was signed on the drawing entry card with a facsimile rubber stamp signature. The State Office required each appellant to submit an

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1/ The following appellants have appealed from decisions affecting the designated offers:

Docket No.	Appellant	Offer No.
IBLA 76-466	Robert C. Leary P. Jeffrey Trimmer John Najjar Room 202 100 South Wacker Drive Chicago, Illinois 60606	NM-27162
IBLA 76-510	H. R. Delasco, Inc. Room 202 100 South Wacker Drive Chicago, Illinois 60606	NM-27159 NM-27192
IBLA 76-539	Seymour Goodman Delmar H. Mahrt Room 202 100 South Wacker Drive Chicago, Illinois 60606	NM-27639

affidavit stating that the stamped name was intended as a signature and that the appellant stamped his name himself or that it was made in his presence. Appellants charge that the State Office's decision improperly [Illegible Word] the requirement of 43 CFR 3112.2-1(a) that offers be "signed and fully executed" as that phrase was construed by this Board in Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971).

The Arata decision involved an appeal from the rejection of drawing entry cards which were signed with rubber stamp facsimile signatures. The Board held that the regulation did not clearly proscribe such signatures, stating:

> There is an abundance of legal authority discussing and interpreting the terms "sign" and "signature." Many state and federal cases hold that the terms include any memorandum, mark, or sign, written or placed on any instrument or writing with intent to execute or authenticate such instrument. It may be written by hand, printed, stamped, typewritten, or engraved. It is immaterial with what kind of instrument a signature is made. Joseph Denunzio Fruit Co. v. Crane, 79 F. Supp. 117 (S.D. Cal. 1948), vacated on other grounds, 89 F. Supp. 962 (S.D. Cal. 1950), rev'd, 188 F.2d 569 (9th Cir. 1951), cert. denied 342 U.S. 820 (1951) (contract); Plemens v. Didde-Glaser, Inc., 244 Md. 556, 224 A.2d 464 (1966) (Uniform Commercial Code); Blackburn v. City of Paducah, 441 S.W.2d 935 (Ky. 1969) (resignation of city official);
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> Weiner v. Mullaney, 59 Cal. App. 2d 620, 140 P.2d 704 (1943) (trust); Bishop v. Norell, 88 Ariz. 148, 353 P.2d 1022 (1960) (Statute of Frauds). The law is well settled that a printed name upon an instrument with the intention that it should be the signature of the person is valid and has the same effect as though the name were written

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fn. 1 (continued)

IBLA 76-576 Garson Lester NM-27798
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IBLA 76-605 Terry A. Kramer NM-27928
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> in the person's own handwriting. Roberts v. Johnson, 212 F.2d 672 (10th Cir. 1954).

Id. at 203, 78 I.D. at 398.

[1] The State Office's decision seems to be predicated on the belief that a valid signature can only be made by the applicant himself or by someone else in his presence at the time the signature is made, but this is not always the rule. See 80 C.J.S. Signatures § 6 (1953). Messages sent by teletype were held to satisfy the California Statute of Frauds, notwithstanding the fact that the transmitting party obviously was not present when the receiving teletype machine made the marks which effected the "signature." Joseph Denunzio Fruit Co. v. Crane, supra. We adhere to our holding in Arata that a drawing entry card may be validly signed with a facsimile signature provided that the applicant intended the stamp to be his signature, but nowhere does Arata state that a handwritten signature and rubber stamp signature are fully equivalent in every respect, for to do so would ignore the very authorities cited in that decision. A handwritten signature is presumed to have been written by the person named therein. There is no such presumption attaching to facsimile signatures. 80 C.J.S. Signatures § 8 (1953).

A rubber-stamped signature on a drawing entry card does not constitute the applicant's signature unless so intended. Without additional evidence establishing that each appellant intended the facsimile to be his signature, it is not improper to find that such intent is not established. Roberts v. Johnson, supra. Accordingly, it is appropriate for the State Office to require each appellant to supply such evidence of intent. To meet the requirement that offers be "signed and fully executed" it is not necessary to show that the offeror personally stamped the offer or that it was stamped in his presence.

[2] However, we perceive another basis for requiring appellants to execute the affidavits proposed by the New Mexico State Office. As we noted above, while a handwritten signature is presumed to have been written by the person named, this presumption does not attach to facsimile signatures. Under 30 U.S.C. § 226 (1970), the Department has no authority to issue an oil and gas lease to anyone other than the first qualified applicant. If an agent, rather than an amanuensis, signs an offer for an applicant by facsimile signature or otherwise, the applicant cannot be considered qualified unless the statements required by 43 CFR 3102.6-1 have been filed. 2/ Southern Union Production Company, 22 IBLA

2/ This regulation provides:

"(a) Evidence required. (1) Except in the case where a member or a partner signs an offer on behalf of an association (as to which, see § 3102.3-1), or where an officer of a corporation signs an offer

379 (1975). The presumption that a handwritten signature was written by the person named therein provides a satisfactory basis for

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fn. 2 (continued)
on behalf of the corporation (as to which, see § 3102.4-1), evidence [must be filed] of the authority of the attorney-in-fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror. Where such evidence has previously been filed in the same proper office where the offer is filed, a reference to the serial number of the record in which it has been filed, together with a statement by the attorney-in-fact or agent that such authority is still in effect will be accepted.

"(2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1-5. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. This requirement does not apply in cases in which the attorney-in-fact or agent is a member of an unincorporated association (including a partnership), or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

"(3) If the power of attorney specifically limits the authority of the attorney in fact to file offers to lease for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part, and grants specific authority to the attorney-in-fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required, by the Acts and the regulations, and the principal agrees therein to be bound by such representations of the attorney-in-fact and waives any and all defenses which may be available to the principal to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney, then the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney-in-fact will be acceptable as compliance with the provisions of the regulations."

concluding that no agent was involved. However, where a rubber stamp appears to be an applicant's signature, the State Office need not presume that an applicant intended the stamp to be his signature, and where no agent's statement has been submitted, the State Office may seek to establish that the applicant's signature was stamped at his request and that the applicant, rather than an agent, formulated the offer. 3/ Otherwise, the State Office takes the risk of issuing improperly a lease to an unqualified applicant. Execution of the statements would avoid such risk if these elements are encompassed. It would be appropriate to have the statement 4/ contain a full delineation of the circumstances under which the stamp was imprinted and the offer formulated.

In essence, where a State Office is not satisfied as to compliance with the regulations, it should require the offeror to state all the circumstances under which the imprint was made and the offer formulated, including without limitation, (a) whether the offeror himself imprinted the facsimile, or (b) whether the imprint was performed in his presence. We emphasize that a negative answer to (a) and (b) does not necessarily invalidate the offer, but an affirmative response to either negates consideration of whether the offeror intended the facsimile to be his signature.

The requirement of executing the statements neither represents an amendment to existing regulations nor constitutes a departure from our holding in Arata, as contended by appellants. The purpose of the statements is to provide assurance to the State Office prior to the issuance of leases that applicants are in compliance with requirements clearly established by existing regulations. To hold that the Bureau cannot require appellants to execute and file statements before issuance of a lease would require that we embrace the unwarranted notion that the Department must issue a lease to a possibly unqualified applicant because it lacks the authority to make inquiry about an applicant's qualifications. Our decision is fully consistent with our decision in Arata. In Arata we merely held that a rubber stamp signature met the requirements of 43 CFR 3112.2-1(a) so long as an applicant intended the stamp to be his signature. The issue of agency was not present in Arata, since it was clear that the applicant in that case swore that she personally stamped the drawing card. That decision cannot be extended to mean that an agent who stamps another person's name to a drawing entry card is relieved of the need to comply with 43 CFR 3102.6-1.

3/ By proper formulation of the offer we mean that the offeror knew that he was applying for an oil and gas lease for the lands described in his offer and that the description was inserted therein before the signature was made.

4/ In view of 18 U.S.C. § 1001 (1970), we believe a statement, rather than an affidavit, is sufficient. See 43 CFR 1821.3-1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed as modified.

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Frederick Fishman
Administrative Judge

We concur:

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Edward W. Stuebing
Administrative Judge

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Newton Frishberg
Chief Administrative Judge